

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TODD VERDIER,

Plaintiff,

v.

PHIL SAMPLE, CLARK COUNTY,  
GREG BOST, LAURIE BOST, TIM  
MARTIN, and PHILIP WALKER,

Defendants.

CASE NO. 22-5594

ORDER

This matter comes before the Court *sua sponte* on review of the *pro se* Plaintiff's Complaint. The Court has reviewed the file and is fully advised.

**Review of the Proposed Complaint.** The Court has carefully considered the newly filed Complaint in this matter. Because Plaintiff filed this complaint *pro se*, the Court has construed the pleadings liberally and has afforded Plaintiff the benefit of any doubt. *See Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir.1988).

On August 17, 2022, the Plaintiff filed this case. Dkt. 1. He asserts that at the time of the events giving rise to this lawsuit, he was in a dispute with his neighbors, Defendants Greg and

1 Laurie Bost over their common boundary and water rights. Dkt. 1. The Complaint asserts that  
2 on August 17, 2012, the Plaintiff shut water off to the Bosts' home. *Id.* at 3. The Bosts called 9-  
3 1-1 and Defendant Deputy Phillip Walker responded. *Id.* When he arrived, Deputy Walker  
4 talked with the Bosts and then went over to the Plaintiff's home. *Id.* The Plaintiff alleges that he  
5 told Deputy Walker that he had a rifle. *Id.* The Plaintiff claims that Deputy Walker handcuffed  
6 him on his deck, with his hands high, and that this was "torture." *Id.* He contends that Deputy  
7 Walker placed the weapon in the trunk of the patrol car. *Id.* The Plaintiff maintains that he was  
8 "under arrest for several hours" and was not read his *Miranda* rights. *Id.*

9 The Plaintiff alleges that Deputy Walker "forced" the Plaintiff to restore water service to  
10 the Bosts by threatening "him with criminal charges of reckless endangerment and tortured [the  
11 Plaintiff] over two days." *Id.* The Plaintiff alleges that after he restored the water, Deputy  
12 Walker re-applied the handcuffs, read him his *Miranda* rights, and "held" him for hours "without  
13 booking him for any alleged crime and without taking him to any police facility." *Id.* at 4. He  
14 asserts that Deputy Walker eventually returned him to his residence and returned the firearm. *Id.*  
15 The Plaintiff maintains that Defendant "Deputy [Phil] Sample and Philip Walker, the Bosts and  
16 Tim Martin and other actors threatened [the Plaintiff] with kidnapping and his murder if the  
17 water services were not provided and/or they benefitted from delivery of the water services and  
18 torture." *Id.*, at 5.

19 The Plaintiff alleges that Defendants violated his civil rights under the second, fourth,  
20 and fifth amendments to the federal constitution, the Trafficking Victims Protection Act, and  
21 Article 1, Sections 3, 7, 16 and 24 of the Washington State Constitution. Dkt. 1.

22 **Related Case.** On September 30, 2015, the Plaintiff, through counsel, filed a related case  
23 against Defendant Clark County and Deputy Walker. *Verdier v. Walker*, U.S. Dist. Court for the  
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1 Western Dist. of Washington case number 3:15-cv-5700 RBL, Dkt. 1 (“2015 Case”). Many of  
2 the allegations in this case’s Complaint are the same or similar to the complaint in the 2015 Case.

3 For example, the complaint in the 2015 Case alleged that on August 17, 2012, the  
4 Plaintiff shut off the Bosts’ water, the Bosts called 9-1-1, and Deputy Walker responded. 2015  
5 Case, Dkt. 1, at 2. It alleged that after speaking with the Bosts, Deputy Walker talked with the  
6 Plaintiff, who informed him that he had a rifle on the premises. *Id.* The 2015 complaint asserted  
7 that Deputy Walker “handcuffed [the Plaintiff] to a chair on his deck, with his hands behind his  
8 back” and put the weapon in the patrol car. *Id.*, at 3. It maintained that “in order to force [the  
9 Plaintiff to restore water service to the Bosts], the deputy threatened him with criminal charges  
10 of reckless endangerment.” *Id.* The 2015 complaint alleged that after the Plaintiff had been  
11 handcuffed for several hours, he was experiencing “extreme pain and discomfort.” *Id.* It alleged  
12 he eventually relented and restored the water. *Id.* The complaint in the 2015 Case asserted that  
13 Deputy Walker then re-applied the handcuffs and read him his *Miranda* rights. *Id.* It contended  
14 that Deputy Walker transported the Plaintiff to Washougal, Washington, “held him for a period  
15 of hours without booking him for any alleged crime and without taking him to any police  
16 facility.” *Id.* It alleged that Deputy Walker eventually took the Plaintiff home and returned his  
17 firearm. *Id.* As he did in the instant case, in the 2015 Case, the Plaintiff brought claims under 42  
18 U.S.C. § 1983 for violations of his second, fourth, fifth amendments to the U.S. Constitution, and  
19 for violations of Article 1, Sections 3, 7, 16 and 24 of the Washington State Constitution. *Id.*

20 On May 18, 2017, Deputy Walker and Clark County’s motion for summary judgment  
21 was granted, and the Plaintiff’s federal claims for violations of his second, fourth, and fifth  
22 amendment claims and state claims for violations of the Washington Constitution were dismissed  
23 with prejudice. 2015 Case, Dkt. 49. The court found that the Plaintiff failed to point to  
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sufficient evidence to support his federal constitutional claims, that Deputy Walker was entitled to qualified immunity, and that the Washington State Supreme Court has not recognized civil claims for violations of the Washington State Constitution. *Id.*

On December 20, 2018, the Ninth Circuit Court of Appeals affirmed the decision to grant the motion for summary judgment. 2015 Case, Dkt. 56. The mandate was issued on January 11, 2019. 2015 Case, Dkt. 57.

### **DISCUSSION**

***Sua Sponte Dismissal.*** A federal court may dismiss a case *sua sponte* pursuant to Fed. R. Civ. P. 12 (b)(6) when it is clear that the plaintiff has not stated a claim upon which relief may be granted. *See Omar v. Sea-Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir.1987) ("A trial court may dismiss a claim *sua sponte* under Fed. R. Civ. P. 12 (b)(6). Such a dismissal may be made without notice where the claimant cannot possibly win relief."). *See also Mallard v. United States Dist. Court*, 490 U.S. 296, 307-08 (1989) (there is little doubt a federal court would have the power to dismiss frivolous complaint *sua sponte*, even in absence of an express statutory provision). A complaint is frivolous when it has no arguable basis in law or fact. *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984).

**Stating a Claim for Relief – Fed. R. Civ. P. 8.** Pursuant to Fed. R. Civ. P. 8 (a):

**Claim for Relief.** A pleading that states a claim for relief must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

1 While the pleading standard under Rule 8 “does not require ‘detailed factual allegations,’ it  
2 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft*  
3 *v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Although pleadings drafted by a party proceeding *pro se*  
4 must be read more liberally than pleadings drafted by counsel, a *pro se* litigant is not excused  
5 from knowing the most basic pleading requirements. *See American Ass’n of Naturopathic*  
6 *Physicians v. Hayhurst*, 227 F.3d 1104, 1107-08 (9th Cir. 2000).

7 **State Constitutional Claims Against All Parties.** Plaintiff’s claims for violation of his  
8 Washington state constitutional rights should be dismissed. There is no private right of action  
9 under the Washington constitution. *Blinka v. Wash. State Bar Ass’n*, 109 Wash. App. 575, 590-  
10 591 (2001) (*noting* “Washington courts have consistently rejected invitations to establish a cause  
11 of action for damages based upon constitutional violations without the aid of augmentative  
12 legislation”); *Reid v. Pierce County*, 136 Wash.2d 195, 213-214 (1998). Furthermore, 42 U.S.C.  
13 § 1983 does not entitle a plaintiff to recover for violations of state constitutional rights. *Barry v.*  
14 *Fowler*, 902 F.2d 770, 772 (9th Cir. 1990). The Plaintiff’s state constitutional claims should be  
15 dismissed with prejudice as a matter of law.

16 **Claim Preclusion of Federal Claims Against Deputy Walker and Clark County.**

17 “Res judicata, or claim preclusion, provides that a final judgment on the merits of an action  
18 precludes the parties from relitigating all issues connected with the action that were or could  
19 have been raised in that action.” *Rein v. Providian Fin’l Corp.*, 270 F.3d 895, 898–99 (9th Cir.  
20 2001). “Claim preclusion is appropriate where: (1) the parties are identical or in privity; (2) the  
21 judgment in the prior action was rendered by a court of competent jurisdiction; (3) there was a  
22 final judgment on the merits; and (4) the same claim or cause of action was involved in both  
23 suits.” *Id.* at 899.

1 The Plaintiff's claims federal claims against Defendant Deputy Walker and Clark County  
2 are barred by claim preclusion. The parties are identical. The judgment in the 2015 case was  
3 rendered in this court and affirmed by the Ninth Circuit Court of Appeals. The federal  
4 constitutional claims were considered on their merits at summary judgment and dismissed. The  
5 federal constitutional claims are the same in both cases. Further, the Plaintiff could have brought  
6 a TVPA claim against Deputy Walker and Clark County in the 2015 Case.

7 "As a general matter, a court may, *sua sponte*, dismiss a case on preclusion grounds  
8 where the records of that court show that a previous action covering the same subject matter and  
9 parties had been dismissed." *Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1054 (9th Cir.  
10 2005)(*internal quotation marks and citation omitted*)(remanding case after finding that those  
11 requirements were not met). Here, the same subject matter and parties - Deputy Walker and  
12 Clark County - have been dismissed by this court. The Plaintiff's federal claims asserted against  
13 Deputy Walker and Clark County should be dismissed with prejudice.

14 **Failure to State a Claim Regarding the Federal TVPA Claim Against Against**  
15 **Defendants Phil Sample, Greg Bost, Laurie Bost and Tim Martin.** The TVPA provides a  
16 civil remedy for victims "against the perpetrator (or whoever knowingly benefits, financially or  
17 by receiving anything of value from participation in a venture which that person knew . . . has  
18 engaged in an act in violation of [the TVPA]) . . ." 18 U.S.C. § 1595(a). The statute requires  
19 that the claim be filed no later than 10 years after the cause of action arose. 18 U.S.C. §  
20 1595(c)(1).

21 The Plaintiff's claim under the TVPA against Defendants Phil Sample, Greg Bost, Laurie  
22 Bost and Tim Martin may be dismissed for failure to state a claim. The Complaint fails to plead  
23 any facts involving these Defendants which would support a claim under the TVPA. Moreover,  
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1 the Plaintiff's Complaint does not identify which provision of the statute he alleges was violated.  
2 His TVPA claim asserted against Defendants Phil Sample, Greg Bost, Laurie Bost and Tim  
3 Martin may be dismissed without prejudice.

4 **Federal Constitutional Claims Against Defendants Phil Sample, Greg Bost, Laurie**  
5 **Bost and Tim Martin.** In order to state a claim for violation of a federal constitutional right  
6 under 42 U.S.C. § 1983, a complaint must allege that (1) the conduct complained of was  
7 committed by a person acting under color of state law, and (2) the conduct deprived a person of a  
8 right, privilege, or immunity secured by the Constitution or laws of the United States. *Parratt v.*  
9 *Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds*, *Daniels v. Williams*, 474 U.S.  
10 327 (1986). Section 1983 is the appropriate avenue to remedy an alleged wrong only if both of  
11 these elements are present. *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985), *cert.*  
12 *denied*, 478 U.S. 1020 (1986). To state a civil rights claim, a plaintiff must set forth the specific  
13 factual bases upon which he or she claims that each defendant is liable. *Aldabe v. Aldabe*, 616  
14 F.2d 1089, 1092 (9th Cir. 1980).

15 Plaintiff's Complaint does not allege any factual support to find that Defendants Phil  
16 Sample, Greg Bost, Laurie Bost, or Tim Martin acted "under color of state law" or that these  
17 Defendants' conduct deprived Plaintiff "of a right, privilege, or immunity secured by the  
18 Constitution or laws of the United States." *See* Dkt. 1. The Complaint makes no factual  
19 allegations related to Phil Sample or Tim Martin. It merely alleges that the Bosts called 9-1-1  
20 and talked with the police when they arrived. No further allegations are made in the Complaint.  
21 Plaintiff has failed to state a claim for which relief can be granted under § 1983 for a violation of  
22 his federal constitutional rights against Defendants Phil Sample, Greg Bost, Laurie Bost, or Tim  
23 Martin. These claims may be dismissed without prejudice.

The Plaintiff should be granted leave to file an amended complaint regarding the claims that may be dismissed without prejudice: the TVPA claim and his federal constitutional claims against Defendants Phil Sample, Greg Bost, Laurie Bost, and Tim Martin. Plaintiff may respond and may file a proposed amended complaint by **September 16, 2022**, complying with Fed. R. Civ. P. 8 and curing the inadequacies raised by the Court herein. The failure to file an appropriate proposed amended complaint may result in dismissal of the case pursuant to Fed. R. Civ. P. 12(b)(6).

It is **ORDERED** that:

- ORDER - 8



- Plaintiff's response and proposed amended complaint, if any, **IS DUE** by **September 16, 2022**. The failure to file a proposed amended complaint may result in dismissal of the case pursuant to Fed. R. Civ. P. 12(b)(6).

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 23<sup>rd</sup> day of August, 2022.

A handwritten signature in black ink, reading "Robert J. Bryan", written over a horizontal line.

ROBERT J. BRYAN  
United States District Judge